

STATE OF MINNESOTA

COUNTY OF WRIGHT

MP Nexlevel, LLC,

Plaintiff,

vs.

Level 3 Communications, LLC,

Defendant.

DISTRICT COURT

TENTH JUDICIAL DISTRICT

Case Type: Contract

Court File No.: _____

SUMMONS

THIS SUMMONS IS DIRECTED TO THE ABOVE-NAMED DEFENDANT.

1. YOU ARE BEING SUED. The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this summons.

2. YOU MUST REPLY WITHIN 21 DAYS TO PROTECT YOUR RIGHTS. You must give or mail to the person who signed this Summons a written response called an Answer within 21 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this summons located at:

Felhaber Larson
220 South Sixth Street, Suite 2200
Minneapolis, MN 55402.

3. YOU MUST RESPOND TO EACH CLAIM. The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS. If you do not Answer within 21 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the Complaint. If you do not want to contest the claims stated in the Complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the Complaint.

5. LEGAL ASSISTANCE. You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.

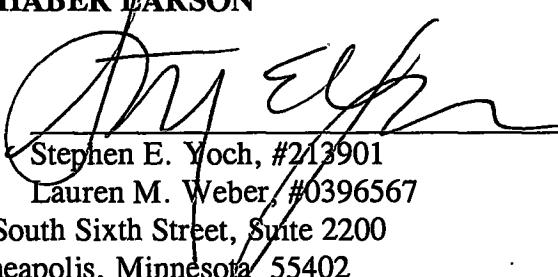
6. ALTERNATIVE DISPUTE RESOLUTION. The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

The object of this action is breach of contract.

Dated: August 20, 2020

FELHABER LARSON

By:


Stephen E. Yoch, #213901
Lauren M. Weber, #0396567
220 South Sixth Street, Suite 2200
Minneapolis, Minnesota 55402
(612) 339-6321

ATTORNEYS FOR PLAINTIFF

STATE OF MINNESOTA

COUNTY OF WRIGHT

MP Nexlevel, LLC,

Plaintiff,

vs.

Level 3 Communications, LLC,

Defendant.

DISTRICT COURT

TENTH JUDICIAL DISTRICT

Case Type: Contract

Court File No.: _____

COMPLAINT

Plaintiff MP Nexlevel, LLC, as and for its Complaint against the above-named Defendant, states and alleges as follows:

1. Plaintiff is a Minnesota limited liability company with its principal executive office address of 500 County Road 37 W, Maple Lake, MN 55358.
2. Upon information and belief, Defendant Level 3 Communications, LLC is a Delaware corporation with a principal executive office address of 1025 Eldorado Blvd., Broomfield, CO 80021, registered to do business in the State of Minnesota.

FACTUAL BACKGROUND

3. Defendant retained Plaintiff to perform telecommunication and other repair services on projects designated by Defendant. The focus of the work was Emergency Repair Services ("ERS"), whereby Plaintiff assured Defendant it was urgent work that was performed without typical purchase orders or contracts because of exigent circumstances.
4. The projects proceeded normally and at no time did Defendant complain about the quality of Plaintiff's work.

5. On or about June 15, 2015, Defendant asked Plaintiff to execute a June 15, 2015 Construction and Installation Services Agreement. The parties signed the agreement and Plaintiff continued to bill in the ordinary course of business.

6. On information and belief, in 2019 Defendant was sold, on information and belief, to CenturyLink a/k/a Centurytel Service Group, Inc. ("CenturyLink").

7. After the purchase of Defendant by CenturyLink, Defendant, by and through Century Link, began to seek to impose new requirements on billing and began to refuse to process existing billing, notwithstanding repeated acknowledgments by Defendant and its employees of the outstanding work performed by Plaintiff.

8. At no time did Plaintiff ever sign an assignment or assumption agreement of any kind with CenturyLink as to work or billing performed by Plaintiff for Defendant.

9. Plaintiff and its employees met with Defendant and representatives of CenturyLink who purported to act on behalf of Level 3 on numerous occasions and even offered to make accommodations in billing to address the transition from Defendant to CenturyLink. Nevertheless, as a result of Defendant's actions, Plaintiff has been unable to submit additional bills and has been "locked out" of Defendant's billing system, notwithstanding the work performed at Defendant's request and the acknowledgment that such work was performed well, acceptable, and within industry standards.

10. Defendant has refused to accept any new billing or pay any outstanding billing of amounts due and owing for work performed by Plaintiff on behalf of Defendant.

11. The unpaid and unbilled projects which Defendant has unilaterally and anticipatorily refused to make payment, in breach of the agreement between the parties include amounts due totaling \$2,808,277.16 as shown in Exhibit A.

COUNT I
BREACH OF CONTRACT

12. Plaintiff incorporates the allegations the paragraphs above as though fully set forth herein.

13. Plaintiff and Defendant entered into a contract whereby Defendant requested Plaintiff to provide services to the benefit of Defendant.

14. Defendant has wrongfully, and in breach of the contract between the parties, refused to provide payment to Plaintiff for such services.

15. As a direct and proximate result of Defendant's breaches, Plaintiff has suffered damages in excess of \$50,000, a precise amount to be proven at trial.

COUNT II
UNJUST ENRICHMENT

16. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth herein.

17. Defendant repeatedly requested Plaintiff to perform work to the benefit of Defendant.

18. Notwithstanding Defendant's acknowledgment of Plaintiff's excellent work, Defendant has refused, without justification, to make payment and has received the benefit of Plaintiff's effort and work, resulting in unjust enrichment in excess of \$50,000 the precise amount to be proven at trial.

COUNT III
ACCOUNT STATED

19. Plaintiff incorporates the allegations in the paragraphs above as though fully set forth herein.

20. Plaintiff has invoiced Defendant for work performed and Defendant has refused to make such payments, notwithstanding an acknowledgment of the work performed by Defendant and that such work of a quality consistent with industry standards.

21. As a direct and proximate result, Plaintiff is entitled to damages in an account stated in an amount in excess of \$50,000, an exact amount to be proven at trial.

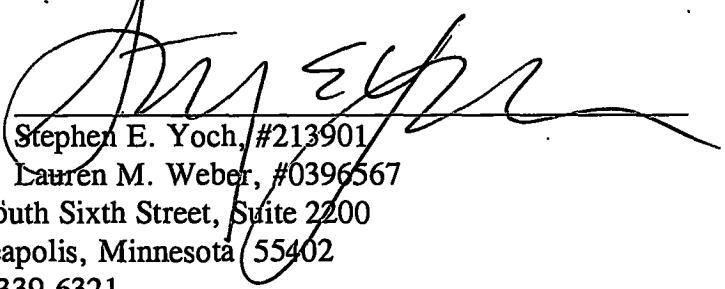
WHEREFORE, Plaintiff demands judgment against Defendant Level 3 Communications, LLC as follows:

1. Award Plaintiff damages for breach of contract, unjust enrichment, and an account stated in an amount in excess of \$50,000; and
2. For such other and further relief as the Court may deem just and equitable.

Dated: August 20, 2020

FELHABER LARSON

By:


Stephen E. Yoch, #213901
Lauren M. Weber, #0396567
220 South Sixth Street, Suite 2200
Minneapolis, Minnesota 55402
(612) 339-6321

ATTORNEYS FOR MP NEXLEVEL, LLC

ACKNOWLEDGMENT

The undersigned hereby acknowledges that costs, disbursements and reasonable attorney and witness fees may be awarded, pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: August 20, 2020

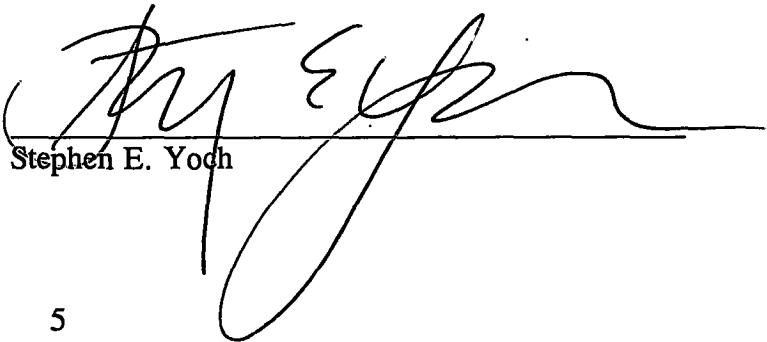

Stephen E. Yoch

EXHIBIT A

MP NEXLEVEL

LEVEL 3

OPEN ACCOUNTS RECEIVABLE AND UNDERBILLING

ORIG INV	DATE	AMT	FINAL INV	CUST	DATE	DATE OF WORK PERFORMED	JOB	AMT INVOICED	PO	DESCRIPTION	LOCATION	CONTACT	NOTES	AMOUNT DUE
			1118353	10098	02/29/20	08/18/15	18113168	16,092.29		Rebore of misplaced ducts, repair sewer, pull fiber	Mobile Gas rebore for	BRETT DESLONDE	TO BE REVISED/@ ERS RATES	\$ 38,434.47
			1118358	10098	02/29/20	09/24/15	18113168	98,462.45		Move and place hand hole-2, dig up and lower ducts to extra dept	KB Jones Rd	WALLY SCRUGGS	TO BE REVISED/@ ERS RATES	\$ 131,981.03
1117785	11/27/19	99,515.87	1117785A	10098	02/25/20	10/20/15	18113168	119,654.51		Bore 2600', splicing fiber, rental equipment	FL US Hwy 331 West side, Lakewood Dr	WALLY SCRUGGS	@ ERS RATES	\$ 155,550.86
			1118250	10098	02/19/20	10/29/15	18113168	95,892.65		Bore casing for RELO, pull ducts, extend conduits per State of Ms	MS 198 Relo	BRETT DESLONDE	TO BE REVISEO/@ ERS RATES	\$ 149,745.05
1117782	11/27/19	23,626.80	1117782A	10098	02/25/20	11/12/15	18173110	26,569.00		Bore 840',	FL US Hwy 331 West side, Coy Burgess Rd going So.	WALLY SCRUGGS	TO BE REVISED/@ ERS RATES	\$ 56,114.28
1117784	11/27/19	9,372.40	1117784A	10098	02/25/20	11/14/15	18173110	7,423.20		Bore 150', traffic control	FL US Hwy 331 West side, North of Burgess Rd	WALLY SCRUGGS	TO BE REVISED/@ ERS RATES	\$ 11,700.72
			1118251	10098	02/19/20	04/07/16	18113168	8,190.00		Lowering of exposed conduits to 4' cover	MS 26 west of Hwy 63	BRETT DESLONDE	TO BE REVISED/@ ERS RATES	\$ 19,436.30
1117781	11/27/19	50,830.80	1117781A	10098	02/14/20	07/11/16	18113168	110,581.30		Grand Bay/Wilmer Rd fiber hit repairand locating of conduits	Grand Bay Wilmer Rd and Hwy 90	BRETT DESLONDE	@ ERS RATES	\$ 143,755.69
1117779	11/27/19	23,825.60	1117779A	10098	02/25/20	08/01/16	18113168	23,792.00		Grade parking lot, form and pour concrete drainage canels	Mobile Co. Newman Rd	WALLY SCRUGGS	@ ERS RATES	\$ 33,831.56
1117780	11/27/19	19,237.12	1117780A	10098	02/25/20	10/06/16	18113168	19,127.92		R&R Solar light panel in Mobile Bay	Mobile Causeway solar Light	BRETT DESLONDE	@ ERS RATES	\$ 24,866.30
			1118507	10098	04/03/20	01/31/17	18113103	42,500.00		Splice case audits Mobile Al (missed billing)	Various locations in Mobile	BRETT DESLONDE	@ ERS RATES	\$ 42,500.00
			1118352	10098	02/29/20	05/01/17	18113168	78,475.00		Dig up and lower ducts to extra depth 860'	Tallahassee (Cemex Plant)	WALLY SCRUGGS	@ ERS RATES	\$ 102,017.50
			1114415	10098	12/31/18	07/24/17	18113168	9,767.60			ERS Pinson Al		@ ERS RATES	\$ 12,697.88
1116759	07/31/19	45,500.00	1116759A	10098	02/10/20	07/25/17	18173110	45,640.00		Dig up and lower ducts 700'	Nine Mile Rd across from Spectrum Dr	NINE MILE	@ ERS RATES	\$ 59,332.00
1116749	07/31/19	149,500.00	1116749A	10098	02/25/20	10/22/17	18173110	149,960.00		Dig up and lower ducts 2300'	Nine Mile Rd 250' east of Heritage Oaks Dr	NINE MILE	@ ERS RATES	\$ 194,948.00
1117783A	02/25/20	7,423.20	1117783B	10098	03/06/20	10/31/17	18113168	76,625.00		Duct son conduits for clear path 20,000', dig ups	FL U5 Hwy 331 west side	WALLY SCRUGGS	@ ERS RATES	\$ 99,612.50
1116536	06/30/19	12,325.00	1116536A	10098	02/10/20	11/27/17	18173110	26,775.00		Duct sonding of conduit 8,500'	Nine Mile at Heritage Oaks Dr	NINE MILE	@ ERS RATES	\$ 34,807.50
			1118359	10098	02/29/20	11/28/17	18113168	9,108.13		Rod and Proof 510', overlash fiber 3625', pull fiber 632'	Mobile (Broad St Mich Ave)	WALLY SCRUGGS	TO BE REVISED/@ ERS RATES	\$ 12,743.34
			1116534	10098	06/30/19	12/04/17	18173110	132,754.00		Extension to emergency Creek bore 2,730', 3place hand holes	Nine Mile Rd emergency bore extension	NINE MILE	@ ERS RATES	\$ 172,580.20
1116530	06/30/19	149,345.00	1116530A	10098	02/25/20	01/04/18	18173110	110,701.70		Emergency bore under wetlands 2730'	Beulah Rd going east	NINE MILE	@ ERS RATES	\$ 143,912.21
			1116763	10098	07/31/19	02/19/18	18173110	1,650.00			West Nine Mile Rd emergency bore			\$ 1,650.00
			1114830	10098	01/31/19	03/01/18	18113168	3,318.08	L713325	Change order	Pinson Al			\$ 3,318.08
1116531	06/30/19	34,255.00	1116531A	10098	02/10/20	03/07/18	18173110	44,252.19		Dig up and lower ducts 527'	Nine Mile Rd at The Dollar General west of Beulah Rd	NINE MILE	@ ERS RATES	\$ 57,527.85
1116525	06/30/19	6,786.00	1116525A	10098	02/25/20	03/09/18	18173110	14,742.00		Duct sonding 4,680'	Nine Mile Rd at I-10 west side	NINE MILE	@ ERS RATES	\$ 19,164.60
1116753	07/31/19	8,035.00	1116753A	10098	02/10/20	03/13/18	18173110	6,488.50		Dig up and lower ducts 100', install hand hole	Nine Mile Rd 250' west of 5125 W Nine Mile	NINE MILE	@ ERS RATES	\$ 8,435.05
1116751	07/31/19	13,585.00	1116751A	10098	02/10/20	03/15/18	18173110	9,791.65		Dig up and lower ducts 209'	Nine Mile Rd at Eight Mile Creek	NINE MILE	@ ERS RATES	\$ 12,729.15
			1118506	10098	04/03/20	04/09/18	18173110	9,342.00		Dig up and lower ducts extra depth 120'	Nine Mile Rd at Nature Creek Blvd	NINE MILE	@ ERS RATES	\$ 12,144.60
1117778	11/27/19	27,365.00	1117778A	10098	02/10/20	05/03/18	18173110	19,723.85		Dig u421'p and lower ducts	Nine Mile Rd at Old Buff O'Brady's	NINE MILE	@ ERS RATES	\$ 25,641.01
1116761	07/31/19	21,575.00	1116761A	10098	02/10/20	05/04/18	18173110	34,707.00		Dig up and lower ducts 245', repair ducts	Nine Mile Rd at Surrey Rd	NINE MILE	@ ERS RATES	\$ 45,119.10
1116757	07/31/19	13,650.00	1116757A	10098	02/10/20	05/09/18	18173110	13,692.00		Dig up and lower ducts 210'	Nine Mile Rd at Cove Rd going east	NINE MILE	@ ERS RATES	\$ 17,799.60
1116532	06/30/19	7,150.00	1116532A	10098	02/10/20	06/05/18	18173110	7,172.00		Dig up and lower ducts extra depth 110'	Nine Mile Rd at Southern Power entrance	NINE MILE	@ ERS RATES	\$ 9,323.60
1116758	07/31/19	38,350.00	1116758A	10098	02/10/20	06/07/18	18173110	60,121.00		Dig up and lower ducts extra depth 590'	Nine Mile Rd at Beard Equip and United Rental	NINE MILE	@ ERS RATES	\$ 78,157.30
1116533	06/30/19	5,850.00	1116533A	10098	02/25/20	06/09/18	18173110	7,519.50		Dig up and repair ducts, move slack	Nine Mile Rd at Waring Rd	NINE MILE	@ ERS RATES	\$ 9,775.35
1116752	07/31/19	19,720.00	1116752A	10098	02/25/20	06/12/18	18173110	23,640.80		Dig up and lower ducts extra depth 232'	Nine Mile Rd at 2065 Nine Mile Rd going east	NINE MILE	@ ERS RATES	\$ 30,733.04
1116149	05/31/19	4,100.00	1116149A	10098	02/25/20	06/18/18	18173110	4,438.00		Duct sond conduits 500'	Nine Mile Rd at I-10 off ramp	NINE MILE	@ ERS RATES	\$ 5,769.40
1116526	06/30/19	12,911.25	1116526A	10098	02/10/20	06/20/18	18173110	16,813.50		Dig up and lower duct to extra depth 165'	Nine Mile Rd at ATT Hut Littleton Rd	NINE MILE	@ ERS RATES	\$ 21,857.55
1115172	03/12/19	15,000.00	1115172A	10098	02/25/20	06/28/18	18173110	13,040.00		Dig up and lower ducts to extra depth 200'	Nine Mile Rd west of I-10 on ramp	NINE MILE	@ ERS RATES	\$ 16,952.00
1116537	06/30/19	50,820.85	1116537A	10098	02/25/20	09/04/18	18173110	32,921.25		Duct sond 5300', dig up and lower extra depth 440', install traffic r	Nine Mile Rd west of I-10 Wil Tel Rd	NINE MILE	@ ERS RATES	\$ 42,797.63
			1114421	10098	12/31/18	09/04/18	18113103	5,643.00			Spectrum Dr		@ ERS RATES	\$ 73,359.00
1116535	06/30/19	15,000.00	1116535A	10098	02/25/20	09/07/18	18173110	13,010.00		Dig up and lower ducts to extra depth 200'	Nine Mile Rd at I-10 Wil Tel lowering	NINE MILE	@ ERS RATES	\$ 16,913.00
		</td												

MP NEXLEVEL

LEVEL 3

OPEN ACCOUNTS RECEIVABLE AND UNDERBILLING

			1118509	10098	04/03/20	02/13/19	18173110	15,250.00	Duct sond varioius locations S000'	Pensacola various locations	WALLY SCRUGGS	@ ERS RATES	\$ 19,825.00
			1118508	10098	04/03/20	02/15/19	18173110	16,419.00	Duct sond conduits 4800', expose 3 hand holes	FL Yellow River crossing	WALLY SCRUGGS	@ ERS RATES	\$ 21,344.70
1116760	07/31/19	27,950.00	1116760A	10098	02/10/20	02/16/19	18173110	18,060.00	Dig up and lower ducts to extra depth 430'	Nine Mile Rd at Stefani Rd (Life Storage)	NINE MILE	@ ERS RATES	\$ 23,478.00
			1118512	10098	04/03/20	02/18/19	18173110	6,300.00	Duct sond conduits 2000'	FL Hwy 81	WALLY SCRUGGS	@ ERS RATES	\$ 8,190.00
			1115699	10098	04/30/19	03/17/19	18113103	76,306.00		ERS Nine Mile		@ ERS RATES	\$ 99,197.80
1116528	06/30/19	6,651.25	1116528A	10098	02/10/20	03/22/19	18173110	7,901.16	Dig up and lower ducts 85', remove hand hole and move slack	Nine Mile Rd at Fowler Rd	NINE MILE	@ ERS RATES	\$ 10,271.51
				10098		10/24/19	18113168		4503078230 Build diverse route into Verizon Site w/fiber	2705 6th Avenue S	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 58.80
				10098		05/10/19	18113168		4503156573 Build route into DC-BLOX to 401 6th St S w/fiber	433 6th St S	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 19,522.56
				10098		10/15/18	18113168		713325 Relo from temp aerial to UG route	RELO Hwy 79 Pinson, AL	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 34,753.92
				10098		10/25/18	18113168		4503039492 Build UG route from MH to Land Title Office w/fiber	600 20th St N	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 2,205.20
				10098		10/15/18	18113168		4503020096 Build UG route into Executive Suites w/fiber	2024 3rd Avenue N	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 13,669.55
				10098		10/23/18	18113168		4502959565 Build UG route into Gray Constuction w/fiber	1728 3rd Ave N	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 1,095.40
				10098		08/31/18	18113103		4502947724 Pull and splice fiber between buildings	600 Corporate Pkwy	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 64.00
				10098		11/06/17	18113168		701035 BB5 Overbuild	600 18th St N	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 3,490.00
				10098		05/31/18	18113168		718014 Aerial to UG RELO due to power pole removal	RELO 6th Avenue N & 12th St S	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 2,000.66
				10098		06/28/18	18113103		701636 Fiber splicing for multiple locations	Various Splice Locations in Birmingham, AL	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 1,325.00
				10098		05/23/18	18113168		706430 BiDi conversion on ring	2001 Park Place	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 13,175.00
				10098		02/08/19	18113168		4503040SS2 Build diverse route to 110 Short Texas St	801 S Water St	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 2,410.50
				10098		12/12/18	18113168		4502955138 Build diverse route aerial/UG for Providence Hospital	6801 Airport Blvd	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 19,065.76
				10098		09/27/19	18173110		698012 Build aerial/UG route to Soleo Health w/splicing	2866 Dauphin St	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 23,438.31
				10098		02/19/16	18113168		TRANSFER ONE REEL OF FIBER TO ANOTHER - MAN HOURS/EQUIP	TRANSFER ONE REEL OF FIBER TO ANOTHER	JIM PARSONS	CUST WILL NOT ACCEPT INV	\$ 1,928.10
								1,966,622.66					\$ 2,808,227.16
		1,017,436.14											